

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	Chapter 11
TODD MEAGHER	§	
	§	Case No. 20-40208-mxm11
	§	
Debtor.	§	
	§	

**DECLARATION OF JASON M. POWERS IN SUPPORT OF
HEB'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY
TO PROCEED WITH PRE-PETITION CLAIMS FOR INJUNCTIVE RELIEF**

I, JASON M. POWERS, do hereby declare:

1. My name is Jason M. Powers. I am over the age of 18 years old, of sound mind, capable of making this declaration, and personally acquainted with the facts stated in this declaration. The facts herein are true and correct.

2. I am an attorney and a partner in the law firm of Vinson & Elkins LLP, acting as counsel for HEB Grocery Company, LP n/k/a H-E-B, LP ("HEB") in the civil action currently pending in the United States District Court for the Southern District of Texas, captioned *HEB Grocery Company, LP v. Todd Meagher et al.*, Case No. 4:17-cv-02810 (the "Southern District Litigation"), between HEB and the Debtor in the above-captioned case, Todd Meagher. I am a member in good standing of the State Bar of Texas. As a result of my representation of HEB in the Southern District Litigation, I have become and am familiar with the papers served on the parties in the course of the litigation and the relevant documents in the public record, as may be further described herein.

3. Attached hereto as **Exhibit 1** [App. 01-03] are true and correct copies of registration certificates for HEB Grocery Company, LP's U.S. Trademark Registrations for the

marks MI TIENDA (Reg. No. 3,319,834) and MI TIENDA & Design (Reg. No. 3,337,015) which were accessed on September 10, 2019 through <https://tsdr.uspto.gov>.

4. Attached hereto as **Exhibit 2** [App. 04–28] are true and correct copies of the Trademark Status & Document Retrieval (TSDR) records of the United States Patent and Trademark Office for the marks MYSTORE (Reg. No. 3,577,991), MYSTORE.COM (Reg. No. 3,577,992), MYSTORE.COM (Serial No. 86763412), MYSTORE (Serial No. 86763399), MYSTORE (Serial No. 87462085), MYSTORE (Serial No. 87462127), and MYSTORE (Serial No. 88216119) filed by Todd Meagher which were accessed on September 10, 2019 through <https://tsdr.uspto.gov>.

5. Attached hereto as **Exhibit 3** [App. 29–34] are true and correct copies of the TSDR records of the United States Patent and Trademark Office for the marks MITIENDA (Serial No. 87609013) and MYSTORE (Serial No. 87608983) filed by Irene Alexis Meagher which were accessed on February 12, 2020 through <https://tsdr.uspto.gov>.

6. Attached hereto as **Exhibit 4** [App. 35–36] is a true and correct copy of the U.S. Trademark Trial and Appeal Board's February 23, 2018 Order [29 TTABVUE] dismissing Todd Meagher's counterclaims filed in Opposition proceeding number 91226910, *HEB Grocery Company, LP v. Todd Meagher*.

7. Attached hereto as **Exhibit 5** [App. 37–39] is a true and correct copy of the U.S. Trademark Trial and Appeal Board's August 12, 2019 Order [7 TTABVUE] suspending Opposition proceeding number 91248975, *H-E-B, LP v. Todd Meagher*, pending final determination of Civil Action No. 4:17-cv-02810 in the U.S. District Court for the Southern District of Texas.

8. Attached hereto as **Exhibit 6** [App. 40–51] is a true and correct copy of the Petition to Cancel trademark registration number 3,319,834 for the mark MI TIENDA filed with the U.S. Trademark Trial and Appeal Board on March 25, 2019 by Irene Alexis Meagher in *Irene Alexis Meagher v. H-E-B, LP*, Cancellation proceeding number 92070913.

9. Attached hereto as **Exhibit 7** [App. 52–54] is a true and correct copy of the U.S. Trademark Trial and Appeal Board’s June 6, 2019 Order [10 TTABVUE] suspending Cancellation proceeding number 92070913, *Irene Alexis Meagher v. H-E-B, LP*, pending disposition of H-E-B, LP’s Motion for Summary Judgment and Alternative Motion to Dismiss.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 12, 2020.



Jason M. Powers
Attorney for HEB Grocery Company, LP
n/k/a H-E-B, LP

EXHIBIT 1

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

Reg. No. 3,319,834

United States Patent and Trademark Office

Registered Oct. 23, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

MI TIENDA

HEB GROCERY COMPANY, L.P. (TEXAS LIMITED PARTNERSHIP)
646 SOUTH MAIN
SAN ANTONIO, TX 78204

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TIENDA", APART FROM THE MARK AS SHOWN.

FOR: RETAIL GROCERY STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

THE ENGLISH TRANSLATION OF THE WORDS "MI TIENDA" IN THE MARK IS "MY STORE".

FIRST USE 9-0-2006; IN COMMERCE 9-0-2006.

SN 78-592,481, FILED 3-22-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

HOWARD FRIEDMAN, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 3,337,015

Registered Nov. 13, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

MI TIENDA

HEB GROCERY COMPANY, L.P. (TEXAS LIMITED PARTNERSHIP)

646 SOUTH MAIN

SAN ANTONIO, TX 78204

FOR: RETAIL GROCERY STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 9-0-2006; IN COMMERCE 9-0-2006.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TIENDA", APART FROM THE MARK AS SHOWN.

THE ENGLISH TRANSLATION OF THE WORDING "MI TIENDA" IN THE MARK IS "MY STORE."

SN 78-850,978, FILED 3-31-2006.

JOHN DWYER, EXAMINING ATTORNEY

EXHIBIT 2

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Mark: MYSTORE

mystore

US Serial Number: 78853849

Application Filing Date: Apr. 04, 2006

US Registration Number: 3577991

Registration Date: Feb. 17, 2009

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/REGISTRATION/Cancelled/Invalidated

The trademark application was registered, but subsequently it was cancelled or invalidated and removed from the registry.

Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Sep. 18, 2015

Publication Date: Feb. 13, 2007

Notice of Allowance Date: Dec. 02, 2008

Date Cancelled: Sep. 18, 2015

Mark Information

Mark Literal Elements: MYSTORE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Advertising and information distribution services, namely, providing classified advertising space via a global computer network; promoting the goods and services of others over the Internet; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Nov. 01, 2005

Use in Commerce: Nov. 01, 2005

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Meagher, Todd

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None Correspondent

Correspondent Name/Address: Erik M. Pelton, Esq.
Erik M. Pelton & Associates, PLLC
P.O. Box 100637
Arlington, VIRGINIA UNITED STATES 22210

Phone: 817-656-5559

Fax: 817-514-0811

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 18, 2015	CANCELLED SEC. 8 (6-YR)	
Feb. 17, 2009	REGISTERED-PRINCIPAL REGISTER	
Jan. 12, 2009	LAW OFFICE REGISTRATION REVIEW COMPLETED	71441
Jan. 10, 2009	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Dec. 22, 2008	STATEMENT OF USE PROCESSING COMPLETE	76874
Dec. 10, 2008	USE AMENDMENT FILED	76874
Dec. 22, 2008	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76874
Dec. 10, 2008	TEAS STATEMENT OF USE RECEIVED	
Dec. 02, 2008	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 20, 2008	TTAB RELEASE CASE TO TRADEMARKS	177827
Oct. 20, 2008	OPPOSITION TERMINATED NO. 999999	177827
Oct. 20, 2008	OPPOSITION DISMISSED NO. 999999	177827
Jun. 13, 2007	OPPOSITION INSTITUTED NO. 999999	177827
Mar. 14, 2007	EXTENSION OF TIME TO OPPOSE RECEIVED	
Feb. 13, 2007	PUBLISHED FOR OPPOSITION	
Jan. 24, 2007	NOTICE OF PUBLICATION	
Dec. 21, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	71441
Dec. 21, 2006	ASSIGNED TO LIE	71441
Dec. 07, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 06, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Dec. 05, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Dec. 05, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 14, 2006	FINAL REFUSAL E-MAILED	
Nov. 14, 2006	FINAL REFUSAL WRITTEN	72617
Oct. 25, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Oct. 23, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 23, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 15, 2006	NON-FINAL ACTION E-MAILED	6325
Sep. 15, 2006	NON-FINAL ACTION WRITTEN	72617
Sep. 15, 2006	ASSIGNED TO EXAMINER	72617
Apr. 11, 2006	NOTICE OF PSEUDO MARK MAILED	
Apr. 07, 2006	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 12, 2009

Proceedings

Summary

Number of 2
Proceedings:

Type of Proceeding: Opposition

Proceeding Number: [91177827](#)

Filing Date: Jun 13, 2007

Status: Terminated

Status Date: Oct 20, 2008

Interlocutory Attorney: GEORGE POLOGEORGIS

Defendant

Name: Todd Meagher

Correspondent Address: Erik M. Pelton, Esq.
Erik M. Pelton & Associates, PLLC
P.O. Box 100637
Arlington VA UNITED STATES , 22210

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE	Cancelled - Section 8	78853849	3577991

Plaintiff(s)

Name: SNOCAP, Inc.

Correspondent Address: Martin R. Greenstein
TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose CA UNITED STATES , 95124-5273

Correspondent e-mail: MRG@TechMark.com , MPV@TechMark.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 13, 2007	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 13, 2007	Jul 23, 2007
3	PENDING, INSTITUTED	Jun 13, 2007	
4	ANSWER	Jul 23, 2007	
5	MOTION TO CONSOLIDATE	Jul 23, 2007	
6	P'S MOTION TO STRIKE	Aug 15, 2007	
7	D'S OPPOSITION/RESPONSE TO MOTION	Aug 29, 2007	
8	PL' REPLY TO DEF'S OPPOSITION TO PL'S MOTION TO STRIKE	Sep 18, 2007	
9	D'S MOTION FOR SUMMARY JUDGMENT	Oct 16, 2007	
10	P'S MOTION FOR SUMMARY JUDGMENT	Nov 20, 2007	
11	P'S MOTION FOR SUMMARY JUDGMENT	Nov 21, 2007	
12	P'S MOTION FOR SUMMARY JUDGMENT	Nov 21, 2007	
13	D'S REPLY IN SUPPORT OF MOTION	Dec 21, 2007	
14	P'S REPLY IN SUPPORT OF MOTION	Jan 10, 2008	
15	PL'S EXHIBITS A 001 TO A257 PART 1 OF 3	Jan 22, 2008	
16	PL'S EXHIBITS A 001 TO A257 PART 2 OF 3	Jan 22, 2008	
17	PL'S EXHIBITS A 001 TO A257 PART 3 OF 3	Jan 22, 2008	
18	SUSPENDED	Jun 18, 2008	
19	CONSOLIDATED WITH 91177828; P'S MTN TO STRIKE GRANTED IN PART; MTNS FOR SUMMARY JUDGMENT DENIED	Aug 26, 2008	
20	WITHDRAWAL OF OPPOSITION	Oct 17, 2008	
21	BD'S DECISION: DISMISSED W/ PREJUDICE	Oct 20, 2008	
22	TERMINATED	Oct 20, 2008	

Type of Proceeding: Extension of Time

Proceeding Number: [78853849](#)

Filing Date: Mar 14, 2007

Status: Terminated

Status Date: Jun 14, 2007

Interlocutory Attorney:

Defendant

Name: Meagher, Todd

Correspondent MEAGHER, TODD

Address: 2101 LEGACY CT
KELLER TX UNITED STATES , 76248-8449

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE	Cancelled - Section 8	78853849	3577991

Potential Opposer(s)

Name: SNOCAP, INC.

Correspondent Martin R. Greenstein

Address: TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose CA UNITED STATES , 95124-5273

Correspondent e-mail: MRG@TechMark.com , MPV@TechMark.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
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Prosecution History

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Mar 14, 2007	
2	EXTENSION OF TIME GRANTED	Mar 14, 2007	

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Mark: MYSTORE.COM



US Serial Number: 78853866

Application Filing Date: Apr. 04, 2006

US Registration Number: 3577992

Registration Date: Feb. 17, 2009

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/REGISTRATION/Cancelled/Invalidated

The trademark application was registered, but subsequently it was cancelled or invalidated and removed from the registry.

Status: Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Sep. 18, 2015

Publication Date: Feb. 13, 2007

Notice of Allowance Date: Dec. 02, 2008

Date Cancelled: Sep. 18, 2015

Mark Information

Mark Literal Elements: MYSTORE.COM

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Advertising and information distribution services, namely, providing classified advertising space via a global computer network; promoting the goods and services of others over the Internet; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: SECTION 8 - CANCELLED

Basis: 1(a)

First Use: Nov. 01, 2005

Use in Commerce: Nov. 01, 2005

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Filed ITU: Yes

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Meagher, Todd

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None Correspondent

Correspondent Name/Address: Erik M. Pelton, Esq.
Erik M. Pelton & Associates, PLLC
P.O. Box 100637
Arlington, VIRGINIA UNITED STATES 22210

Phone: 817-656-5559

Fax: 817-656-0811

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 18, 2015	CANCELLED SEC. 8 (6-YR)	
Feb. 17, 2009	REGISTERED-PRINCIPAL REGISTER	
Jan. 12, 2009	LAW OFFICE REGISTRATION REVIEW COMPLETED	71441
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Dec. 05, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 14, 2006	FINAL REFUSAL E-MAILED	
Nov. 14, 2006	FINAL REFUSAL WRITTEN	72617
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Oct. 23, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Oct. 23, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 15, 2006	NON-FINAL ACTION E-MAILED	6325
Sep. 15, 2006	NON-FINAL ACTION WRITTEN	72617
Sep. 15, 2006	ASSIGNED TO EXAMINER	72617
Apr. 11, 2006	NOTICE OF PSEUDO MARK MAILED	
Apr. 07, 2006	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 12, 2009

Proceedings

Summary

Number of 2
Proceedings:

Type of Proceeding: Opposition

Proceeding [91177828](#)
Number:

Filing Date: Jun 13, 2007

Status: Terminated

Status Date: Oct 20, 2008

Interlocutory Attorney: GEORGE POLOGEORGIS

Defendant

Name: Todd Meagher

Correspondent Erik M. Pelton, Esq.
Address: Erik M. Pelton & Associates, PLLC
P.O. Box 100637
Arlington VA UNITED STATES , 22210

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE.COM	Cancelled - Section 8	78853866	3577992

Plaintiff(s)

Name: SNOCAP, INC.

Correspondent Martin R. Greenstein
Address: TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose CA UNITED STATES , 95124-5273

Correspondent e-mail: MRG@TechMark.com , MPV@TechMark.com

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 13, 2007	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 13, 2007	Jul 23, 2007
3	PENDING, INSTITUTED	Jun 13, 2007	
4	ANSWER	Jul 23, 2007	
5	MOTION TO CONSOLIDATE	Jul 23, 2007	
6	P'S MOTION TO STRIKE	Aug 15, 2007	
7	D'S OPPOSITION/RESPONSE TO MOTION	Aug 29, 2007	
8	PAPER RECEIVED AT TTAB	Sep 18, 2007	
9	D'S MOTION FOR SUMMARY JUDGMENT	Oct 16, 2007	
10	P'S MOTION FOR SUMMARY JUDGMENT	Nov 20, 2007	
11	P'S MOTION FOR SUMMARY JUDGMENT	Nov 21, 2007	
12	P'S MOTION FOR SUMMARY JUDGMENT	Nov 21, 2007	
13	D'S REPLY IN SUPPORT OF MOTION	Dec 21, 2007	
14	P'S REPLY IN SUPPORT OF MOTION	Jan 10, 2008	
15	SUSPENDED	Jun 18, 2008	
16	CONSOLIDATED W/ 91177827; P'S MTN TO STRIKE GRANTED IN PART; MTNS FOR SUMMARY JUDGMENT DENIED	Aug 26, 2008	
17	WITHDRAWAL OF OPPOSITION	Oct 17, 2008	
18	BD'S DECISION: DISMISSED W/ PREJUDICE	Oct 20, 2008	
19	TERMINATED	Oct 20, 2008	

Type of Proceeding: Extension of Time

Proceeding [78853866](#)

Filing Date: Mar 14, 2007

Number: _____

Status: Terminated

Status Date: Jun 14, 2007

Interlocutory
Attorney:

Defendant

Name: Meagher, Todd

Correspondent MEAGHER, TODD

Address: 2101 LEGACY CT
KELLER TX UNITED STATES , 76248-8449

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE.COM	Cancelled - Section 8	78853866	3577992

Potential Opposer(s)

Name: SNOCAP, INC.

Correspondent Martin R. Greenstein

Address: TechMark a Law Corporation
4820 Harwood Road, 2nd Floor
San Jose CA UNITED STATES , 95124-5273

Correspondent e-mail: MRG@TechMark.com , MPV@TechMark.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
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Prosecution History

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Mar 14, 2007	
2	EXTENSION OF TIME GRANTED	Mar 14, 2007	

Generated on: This page was generated by TSDR on 2019-09-10 14:19:45 EDT

Mark: MYSTORE.COM

MyStore.Com

US Serial Number: 86763412

Application Filing Date: Sep. 21, 2015

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/APPLICATION/Refused/Dismissed or Invalidated

This trademark application was refused, dismissed, or invalidated by the Office and this application is no longer active.

Status: Abandoned after an inter partes decision by the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Feb. 21, 2018

Publication Date: Mar. 08, 2016

Date Abandoned: Feb. 21, 2018

Mark Information

Mark Literal Elements: MYSTORE.COM

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Provision of an on-line marketplace for buyers and sellers of goods and services

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ABANDONED

Basis: 1(a)

First Use: Nov. 01, 2005

Use in Commerce: Nov. 01, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Meagher, Todd

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Wendy Peterson

Attorney Primary Email Address: wsp@NJPLS.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Wendy Peterson
Not Just Patents LLC
PO Box 18716
Minneapolis, MINNESOTA UNITED STATES 55418

Phone: 6515007590

Correspondent e-mail: wsp@NJPLS.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 23, 2018	BOARD DECISION COUNTERCLAIM DENIED	226910
Feb. 21, 2018	ABANDONMENT NOTICE MAILED - INTER PARTES DECISION	
Feb. 21, 2018	ABANDONMENT - AFTER INTER PARTES DECISION	
Feb. 21, 2018	OPPOSITION TERMINATED NO. 999999	226910
Feb. 21, 2018	OPPOSITION SUSTAINED NO. 999999	226910
Feb. 14, 2017	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Feb. 14, 2017	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Mar. 17, 2016	OPPOSITION INSTITUTED NO. 999999	226910
Mar. 17, 2016	OPPOSITION PAPERS RECEIVED AT TTAB	
Mar. 08, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 08, 2016	PUBLISHED FOR OPPOSITION	
Feb. 17, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 02, 2016	LAW OFFICE PUBLICATION REVIEW COMPLETED	77312
Feb. 01, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 28, 2016	TEAS/EMAIL CORRESPONDENCE ENTERED	77312
Jan. 28, 2016	CORRESPONDENCE RECEIVED IN LAW OFFICE	77312
Jan. 26, 2016	ASSIGNED TO LIE	77312
Jan. 13, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jan. 13, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jan. 13, 2016	NON-FINAL ACTION E-MAILED	6325
Jan. 13, 2016	NON-FINAL ACTION WRITTEN	86333
Jan. 07, 2016	ASSIGNED TO EXAMINER	86333
Sep. 26, 2015	NOTICE OF PSEUDO MARK E-MAILED	
Sep. 25, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 24, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: ULRICH, NANCY G

Law Office Assigned: LAW OFFICE 113

File Location

Current Location: TTAB

Date in Location: Feb. 21, 2018

Proceedings

Summary

Number of 1
Proceedings:

Type of Proceeding: Opposition

Proceeding [91226910](#)
Number:

Filing Date: Mar 16, 2016

Status: Terminated

Status Date: Feb 21, 2018

Interlocutory ANDREW P BAXLEY
Attorney:

Defendant

Name: Todd Meagher

Correspondent WENDY PETERSON
Address: NOT JUST PATENTS LLC
PO BOX 18716
MINNEAPOLIS MN UNITED STATES , 55418

Correspondent e-mail: wsp@NJPLS.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE	Abandoned - After Inter-Partes Decision	86763399	
MYSTORE.COM	Abandoned - After Inter-Partes Decision	86763412	

Plaintiff(s)

Name: HEB Grocery Company, LP

Correspondent TYSON D SMITH
Address: PIRKEY BARBER PLLC
600 CONGRESS AVE STE 2120
AUSTIN TX UNITED STATES , 78701

Correspondent e-mail: tmcentral@pirkeybarber.com , lpirkey@pirkeybarber.com , tsmith@pirkeybarber.com , drausa@pirkeybarber.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MI TIENDA	Cancellation Pending	78592481	3319834
MI TIENDA	REGISTERED AND RENEWED	78850978	3337015

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 16, 2016	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 17, 2016	Apr 26, 2016
3	PENDING, INSTITUTED	Mar 17, 2016	
4	CHANGE OF CORRESP ADDRESS	Apr 15, 2016	
5	D APPEARANCE / POWER OF ATTORNEY	Apr 15, 2016	
6	ANSWER AND COUNTERCLAIM (FEE)	Apr 19, 2016	
7	ANSWER TO COUNTERCLAIM DUE (DUE DATE)	Apr 28, 2016	Jun 07, 2016
8	P MOT TO DISMISS COUNTERCLAIM: FRCP 12(B)	May 27, 2016	
9	AMENDED ANSWER AND COUNTERCLAIM	Jun 05, 2016	
10	MOT TO AMEND APPLICATION	Jun 05, 2016	
11	AMEND DEFERRED; ANSWER TO AMENDED CC DUE	Jun 15, 2016	
12	P MOT TO DISMISS COUNTERCLAIM: FRCP 12(B)	Jul 05, 2016	
13	D OPP/RESP TO MOTION	Jul 13, 2016	
14	SUSP PEND DISP OF OUTSTNDNG MOT	Jul 15, 2016	
15	P REPLY IN SUPPORT OF MOTION	Jul 25, 2016	
16	TRIAL DATES RESET	Sep 27, 2016	
17	ANSWER TO COUNTERCLAIM	Nov 22, 2016	

18	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jan 18, 2017	
19	EXTENSION OF TIME GRANTED	Jan 31, 2017	
20	D MOT FOR EXT W/ CONSENT	Jul 17, 2017	
21	EXTENSION OF TIME GRANTED	Aug 11, 2017	
22	W/DRAW OF APPLICATION	Sep 13, 2017	
23	RESPONSE DUE 30 DAYS (DUE DATE)	Sep 21, 2017	Oct 21, 2017
24	CORRECTION TO BD ORDER	Sep 21, 2017	
25	TRIAL DATES RESET	Oct 26, 2017	
26	W/DRAW OF COUNTERCLAIM	Feb 05, 2018	
27	BD DECISION: SUSTAINED	Feb 21, 2018	
28	TERMINATED	Feb 21, 2018	
29	BD DECISION: COUNTERCLAIM DISMISSED	Feb 23, 2018	

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Mark: MYSTORE

MyStore

US Serial Number: 86763399

Application Filing Date: Sep. 21, 2015

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/APPLICATION/Refused/Dismissed or Invalidated

This trademark application was refused, dismissed, or invalidated by the Office and this application is no longer active.

Status: Abandoned after an inter partes decision by the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Feb. 21, 2018

Publication Date: Feb. 16, 2016

Date Abandoned: Feb. 21, 2018

Mark Information

Mark Literal Elements: MYSTORE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Provision of an on-line marketplace for buyers and sellers of goods and services

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ABANDONED

Basis: 1(a)

First Use: Nov. 01, 2005

Use in Commerce: Nov. 01, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Meagher, Todd

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Wendy Peterson

Attorney Primary Email Address: wsp@NJPLS.com

Attorney Email Yes
Authorized:

Correspondent

Correspondent Name/Address: Wendy Peterson
Not Just Patents LLC
PO Box 18716
Minneapolis, MINNESOTA UNITED STATES 55418

Phone: 6515007590

Correspondent e-mail: wsp@NJPLS.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 23, 2018	BOARD DECISION COUNTERCLAIM DENIED	226910
Feb. 21, 2018	ABANDONMENT NOTICE MAILED - INTER PARTES DECISION	
Feb. 21, 2018	ABANDONMENT - AFTER INTER PARTES DECISION	
Feb. 21, 2018	OPPOSITION TERMINATED NO. 999999	226910
Feb. 21, 2018	OPPOSITION SUSTAINED NO. 999999	226910
Feb. 14, 2017	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Feb. 14, 2017	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Mar. 17, 2016	OPPOSITION INSTITUTED NO. 999999	226910
Mar. 17, 2016	OPPOSITION PAPERS RECEIVED AT TTAB	
Feb. 16, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 16, 2016	PUBLISHED FOR OPPOSITION	
Jan. 27, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 13, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 07, 2016	ASSIGNED TO EXAMINER	86333
Sep. 26, 2015	NOTICE OF PSEUDO MARK E-MAILED	
Sep. 25, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 24, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: ULRICH, NANCY G

Law Office LAW OFFICE 113
Assigned:

File Location

Current Location: TTAB

Date in Location: Feb. 21, 2018

Proceedings

Summary

Number of
Proceedings: 1

Type of Proceeding: Opposition

Proceeding [91226910](#)

Filing Date: Mar 16, 2016

Number: _____

Status: Terminated

Status Date: Feb 21, 2018

Interlocutory ANDREW P BAXLEY
Attorney:

Defendant

Name: Todd Meagher

Correspondent WENDY PETERSON
Address: NOT JUST PATENTS LLC
PO BOX 18716
MINNEAPOLIS MN UNITED STATES , 55418

Correspondent e-mail: wsp@NJPLS.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE	Abandoned - After Inter-Partes Decision	86763399	
MYSTORE.COM	Abandoned - After Inter-Partes Decision	86763412	

Plaintiff(s)

Name: HEB Grocery Company, LP

Correspondent TYSON D SMITH
Address: PIRKEY BARBER PLLC
600 CONGRESS AVE STE 2120
AUSTIN TX UNITED STATES , 78701

Correspondent e-mail: tmcentral@pirkeybarber.com , lpirkey@pirkeybarber.com , tsmith@pirkeybarber.com , drausa@pirkeybarber.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MI TIENDA	Cancellation Pending	78592481	3319834
MI TIENDA	REGISTERED AND RENEWED	78850978	3337015

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 16, 2016	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 17, 2016	Apr 26, 2016
3	PENDING, INSTITUTED	Mar 17, 2016	
4	CHANGE OF CORRESP ADDRESS	Apr 15, 2016	
5	D APPEARANCE / POWER OF ATTORNEY	Apr 15, 2016	
6	ANSWER AND COUNTERCLAIM (FEE)	Apr 19, 2016	
7	ANSWER TO COUNTERCLAIM DUE (DUE DATE)	Apr 28, 2016	Jun 07, 2016
8	P MOT TO DISMISS COUNTERCLAIM: FRCP 12(B)	May 27, 2016	
9	AMENDED ANSWER AND COUNTERCLAIM	Jun 05, 2016	
10	MOT TO AMEND APPLICATION	Jun 05, 2016	
11	AMEND DEFERRED; ANSWER TO AMENDED CC DUE	Jun 15, 2016	
12	P MOT TO DISMISS COUNTERCLAIM: FRCP 12(B)	Jul 05, 2016	
13	D OPP/RESP TO MOTION	Jul 13, 2016	
14	SUSP PEND DISP OF OUTSTNDNG MOT	Jul 15, 2016	
15	P REPLY IN SUPPORT OF MOTION	Jul 25, 2016	
16	TRIAL DATES RESET	Sep 27, 2016	
17	ANSWER TO COUNTERCLAIM	Nov 22, 2016	
18	P MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Jan 18, 2017	
19	EXTENSION OF TIME GRANTED	Jan 31, 2017	
20	D MOT FOR EXT W/ CONSENT	Jul 17, 2017	
21	EXTENSION OF TIME GRANTED	Aug 11, 2017	
22	W/DRAW OF APPLICATION	Sep 13, 2017	
23	RESPONSE DUE 30 DAYS (DUE DATE)	Sep 21, 2017	Oct 21, 2017
24	CORRECTION TO BD ORDER	Sep 21, 2017	
25	TRIAL DATES RESET	Oct 26, 2017	

26	W/DRAW OF COUNTERCLAIM	Feb 05, 2018
27	BD DECISION: SUSTAINED	Feb 21, 2018
28	TERMINATED	Feb 21, 2018
29	BD DECISION: COUNTERCLAIM DISMISSED	Feb 23, 2018

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Mark: MYSTORE

MyStore

US Serial Number: 87462085

Application Filing Date: May 24, 2017

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/APPLICATION/Withdrawn/Abandoned

The owner of the trademark application withdrew (e.g. abandoned) the application and the application is no longer active.

Status: Abandoned because the applicant filed an express abandonment. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Sep. 15, 2017

Date Abandoned: Sep. 14, 2017

Mark Information

Mark Literal Elements: MYSTORE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Marketing the goods and services of others

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 11, 2005

Use in Commerce: Jan. 11, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Todd Meagher

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: TODD MEAGHER
2101 LEGACY COURT
KELLER, TEXAS UNITED STATES 76248
Phone: 8174031188

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 15, 2017	ABANDONMENT NOTICE MAILED - EXPRESS ABANDONMENT	
Sep. 15, 2017	ABANDONMENT - EXPRESS MAILED	
Sep. 14, 2017	TEAS EXPRESS ABANDONMENT RECEIVED	
Aug. 31, 2017	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Aug. 31, 2017	LETTER OF SUSPENSION E-MAILED	6332
Aug. 31, 2017	SUSPENSION LETTER WRITTEN	91234
Aug. 24, 2017	ASSIGNED TO EXAMINER	91234
May 31, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 27, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BHUPATHI, TARA LUISE

Law Office Assigned: LAW OFFICE 124

File Location

Current Location: TMO LAW OFFICE 124 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Aug. 31, 2017

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Mark: MYSTORE

MyStore

US Serial Number: 87462127

Application Filing Date: May 24, 2017

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/APPLICATION/Withdrawn/Abandoned

The owner of the trademark application withdrew (e.g. abandoned) the application and the application is no longer active.

Status: Abandoned because the applicant filed an express abandonment. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Sep. 15, 2017

Date Abandoned: Sep. 14, 2017

Mark Information

Mark Literal Elements: MYSTORE

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Description of Mark: The mark consists of The words My and Store together as one word with a capital M and S.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Marketing the goods and services of others

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 11, 2005

Use in Commerce: Jan. 11, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Todd Meagher

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None
Correspondent

Correspondent Name/Address: TODD MEAGHER
2101 LEGACY COURT
KELLER, TEXAS UNITED STATES 76248

Phone: 8174031188

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 15, 2017	ABANDONMENT NOTICE MAILED - EXPRESS ABANDONMENT	
Sep. 15, 2017	ABANDONMENT - EXPRESS MAILED	
Sep. 14, 2017	TEAS EXPRESS ABANDONMENT RECEIVED	
Aug. 31, 2017	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Aug. 31, 2017	LETTER OF SUSPENSION E-MAILED	6332
Aug. 31, 2017	SUSPENSION LETTER WRITTEN	91234
Aug. 24, 2017	ASSIGNED TO EXAMINER	91234
May 31, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 27, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BHUPATHI, TARA LUISE

Law Office Assigned: LAW OFFICE 124

File Location

Current Location: TMO LAW OFFICE 124 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Aug. 31, 2017

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Mark: MYSTORE

MyStore

US Serial Number: 88216119

Application Filing Date: Dec. 04, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Opposition Pending

The pending trademark application has been examined by the Office and was published for opposition, at which time one or more oppositions were filed but they have not yet been decided.

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jun. 19, 2019

Publication Date: Feb. 19, 2019

Mark Information

Mark Literal Elements: MYSTORE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Advertising and information distribution services, namely, providing classified advertising space via a global computer network; promoting the goods and services of others over the Internet; providing on-line computer databases and on-line searchable databases featuring classified listings and want ads

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(a)

First Use: Nov. 01, 2005

Use in Commerce: Nov. 01, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Todd Meagher

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: WENDY S PETERSON
NOT JUST PATENTS LLC
PO BOX 18716
MINNEAPOLIS, MINNESOTA UNITED STATES 55418

Phone: 817-403-1188

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jun. 19, 2019	OPPOSITION INSTITUTED NO. 999999	248975
Mar. 20, 2019	EXTENSION OF TIME TO OPPOSE RECEIVED	
Feb. 19, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 19, 2019	PUBLISHED FOR OPPOSITION	
Jan. 30, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 08, 2019	WITHDRAWN FROM PUB - OG REVIEW QUERY	62699
Dec. 20, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 20, 2018	ASSIGNED TO LIE	68171
Dec. 17, 2018	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	
Dec. 15, 2018	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Dec. 15, 2018	LETTER OF SUSPENSION E-MAILED	6332
Dec. 15, 2018	SUSPENSION LETTER WRITTEN	83223
Dec. 11, 2018	ASSIGNED TO EXAMINER	83223
Dec. 11, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 11, 2018	REQUEST FOR SPECIAL HANDLING - GRANTED	70989
Dec. 11, 2018	ASSIGNED TO PETITION STAFF	70989
Dec. 11, 2018	TEAS REQUEST TO MAKE SPECIAL RECEIVED	1111
Dec. 07, 2018	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BIDDULPH, HEATHER ANN

Law Office Assigned: LAW OFFICE 125

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jan. 16, 2019

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: [91248975](#)

Filing Date: Jun 19, 2019

Status: Suspended

Status Date: Aug 12, 2019

Interlocutory Attorney: MIKE WEBSTER

Defendant

Name: Todd Meagher

Correspondent WENDY S PETERSON
Address: NOT JUST PATENTS LLC
PO BOX 18716
MINNEAPOLIS MN UNITED STATES , 55418

Correspondent e-mail: wsp@NJPLS.com , wspnjpls@gmail.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE	Opposition Pending	88216119	

Plaintiff(s)

Name: H-E-B, LP

Correspondent TYSON D. SMITH
Address: PIRKEY BARBER PLLC
1801 EAST 6TH STREET, SUITE 300
AUSTIN TX UNITED STATES , 78702

Correspondent e-mail: lpirkey@pirkeybarber.com , tsmith@pirkeybarber.com , twimberly@pirkeybarber.com , drausa@pirkeybarber.com , tmcentral@pirkeybarber.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MI TIENDA	Cancellation Pending	78592481	3319834
MI TIENDA	REGISTERED AND RENEWED	78850978	3337015
MI TIENDA	PRIORITY ACTION MAILED	88373448	
MI TIENDA	PRIORITY ACTION MAILED	88373465	
MI TIENDA	PRIORITY ACTION MAILED	88373475	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jun 19, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jun 19, 2019	Jul 29, 2019
3	INSTITUTED	Jun 19, 2019	
4	P MOT TO SUSP PEND DISP CIV ACTION	Jul 02, 2019	
5	D CHANGE OF CORRESP ADDRESS	Jul 02, 2019	
6	D MOTION	Jul 02, 2019	
7	SUSP PEND DISP OF CIVIL ACTION	Aug 12, 2019	
8	P CHANGE OF CORRESP ADDRESS	Aug 12, 2019	

Type of Proceeding: Extension of Time

Proceeding Number: [88216119](#)

Filing Date: Mar 20, 2019

Status: Terminated

Status Date: Jun 19, 2019

Interlocutory Attorney:

Defendant

Name: Todd Meagher

Correspondent TODD MEAGHER
Address: 2101 LEGACY COURT
KELLER TX UNITED STATES , 76248

Correspondent e-mail: toddme@gher.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MYSTORE	Opposition Pending	88216119	

Potential Opposer(s)

Name: H-E-B, LP

Correspondent Tyson D. Smith
Address: Pirkey Barber PLLC
600 Congress Avenue, Suite 2120
Austin TX UNITED STATES , 78701

Correspondent e-mail: lpirkey@pirkeybarber.com , tsmith@pirkeybarber.com , twimberly@pirkeybarber.com , drausa@pirkeybarber.com , tmcentral@pirkeybarber.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
Prosecution History			
Entry Number	History Text	Date	Due Date
1	FIRST 90-DAY REQUEST TO EXT TIME TO OPPOSE	Mar 20, 2019	
2	EXT GRANTED	Mar 20, 2019	
3	P REQ FOR RECON	Mar 20, 2019	
4	P REQ FOR RECON DENIED	Mar 29, 2019	

EXHIBIT 3

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Mark: MITIENDA

Mitienda

US Serial Number: 87609013

Application Filing Date: Sep. 14, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/APPLICATION/Withdrawn/Abandoned

The owner of the trademark application withdrew (e.g. abandoned) the application and the application is no longer active.

Status: Abandoned because the applicant filed an express abandonment. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Jan. 23, 2018

Date Abandoned: Jan. 22, 2018

Mark Information

Mark Literal Elements: MITIENDA

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Translation: The English translation of "MITIENDA" in the mark is "MYSTORE".

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Internet-based social networking services

International Class(es): 045 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 11, 2005

Use in Commerce: Jan. 11, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Irene Alexis Meagher

Owner Address: 2101 Legacy Court
Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: IRENE ALEXIS MEAGHER
2101 LEGACY COURT
KELLER, TEXAS UNITED STATES 76248
Phone: 817-403-1187

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 23, 2018	ABANDONMENT NOTICE MAILED - EXPRESS ABANDONMENT	
Jan. 23, 2018	ABANDONMENT - EXPRESS MAILED	
Jan. 22, 2018	TEAS EXPRESS ABANDONMENT RECEIVED	
Dec. 21, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Dec. 21, 2017	NON-FINAL ACTION E-MAILED	6325
Dec. 21, 2017	NON-FINAL ACTION WRITTEN	93649
Dec. 18, 2017	ASSIGNED TO EXAMINER	93649
Sep. 20, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 18, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CROWDER-SCHAEFER, ANDR

Law Office Assigned: LAW OFFICE 104

File Location

Current Location: TMEG LAW OFFICE 104 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Dec. 21, 2017

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Cancellation

Proceeding Number: [92070913](#)

Filing Date: Mar 25, 2019

Status: Suspended

Status Date: May 08, 2019

Interlocutory Attorney: SHANNA K SANDERS

Defendant

Name: H-E-B, LP

Correspondent Address: TYSON D. SMITH
PIRKEY BARBER PLLC
1801 EAST 6TH STREET, SUITE 300
AUSTIN TX UNITED STATES , 78702

Correspondent e-mail: lpirkey@pirkeybarber.com , twimberly@pirkeybarber.com , tsmith@pirkeybarber.com , gyaquinto@pirkeybarber.com , drausa@pirkeybarber.com , arber.com , tmcentral@pirkeybarber.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
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MI TIENDA

Cancellation Pending

[78592481](#)

[3319834](#)

Plaintiff(s)

Name: Irene Alexis Meagher

Correspondent WENDY PETERSON

Address: NOT JUST PATENTS LLC
P O BOX 18716
MINNEAPOLIS MN UNITED STATES , 55418

Correspondent e-mail: wsp@NJPLS.com , wspnjpls@gmail.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
MITIENDA	Abandoned - Express	87609013	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Mar 25, 2019	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Mar 26, 2019	May 05, 2019
3	INSTITUTED	Mar 26, 2019	
4	P MOT TO AMEND PLEADING/AMENDED PLEADING	Apr 02, 2019	
5	TRIAL DATES RESET	Apr 08, 2019	
6	D APPEARANCE / POWER OF ATTORNEY	May 08, 2019	
7	D CHANGE OF CORRESP ADDRESS	May 08, 2019	
8	D MOT FOR SUMMARY JUDGMENT	May 08, 2019	
9	P OPP/RESP TO MOTION	May 28, 2019	
10	SUSP PEND DISP OF OUTSTNDNG MOT	Jun 06, 2019	
11	D REPLY IN SUPPORT OF MOTION	Jun 17, 2019	
12	PAPER RECEIVED AT TTAB	Jun 17, 2019	
13	D RESP TO BD ORDER/INQUIRY	Jul 08, 2019	
14	D CHANGE OF CORRESP ADDRESS	Aug 12, 2019	

Generated on: This page was generated by TSDR on 2020-02-12 13:26:30 EST

Mark: MYSTORE

MyStore

US Serial Number: 87608983

Application Filing Date: Sep. 14, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status Descriptor:



DEAD/APPLICATION/Withdrawn/Abandoned

The owner of the trademark application withdrew (e.g. abandoned) the application and the application is no longer active.

Status: Abandoned because the applicant filed an express abandonment. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: May 01, 2018

Date Abandoned: May 01, 2018

Mark Information

Mark Literal Elements: MYSTORE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Internet-based social networking services

International Class(es): 045 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 11, 2005

Use in Commerce: Jan. 11, 2005

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Irene Alexis Meagher

Owner Address: 2101 Legacy Court

Keller, TEXAS UNITED STATES 76248

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent IRENE ALEXIS MEAGHER
Name/Address: 2101 LEGACY COURT
KELLER, TEXAS UNITED STATES 76248
Phone: 817-403-1187

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
May 01, 2018	ABANDONMENT NOTICE MAILED - EXPRESS ABANDONMENT	
May 01, 2018	ABANDONMENT - EXPRESS MAILED	
May 01, 2018	TEAS EXPRESS ABANDONMENT RECEIVED	
Dec. 21, 2017	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Dec. 21, 2017	LETTER OF SUSPENSION E-MAILED	6332
Dec. 21, 2017	SUSPENSION LETTER WRITTEN	93649
Dec. 18, 2017	ASSIGNED TO EXAMINER	93649
Sep. 20, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 18, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: CROWDER-SCHAEFER, ANDR

Law Office LAW OFFICE 104
Assigned:

File Location

Current Location: TMEG LAW OFFICE 104 - EXAMINING
ATTORNEY ASSIGNED

Date in Location: Dec. 21, 2017

EXHIBIT 4

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: February 23, 2018

Opposition No. 91226910

HEB Grocery Company, LP

v.

Todd Meagher

By the Trademark Trial and Appeal Board:

The February 21, 2018 order is clarified to reflect that, because Opposer's written consent to Applicant's withdrawal of the counterclaim (filed February 5, 2018) is not of record, the counterclaim is dismissed with prejudice. *See* Trademark Rules 2.106(b)(3)(ii) and 2.114(c).

EXHIBIT 5

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

mw/dav

August 12, 2019

Opposition No. 91248975

H-E-B, LP

v.

Todd Meagher

Michael Webster, Interlocutory Attorney:

Opposer's motion, filed July 2, 2019, to suspend this proceeding pending final determination of Civil Action No. 4:17-cv-02810, filed in the U.S. District Court for the Southern District of Texas, is **granted** as conceded.¹ See Trademark Rules 2.127(a) and 2.117(a).²

Accordingly, proceedings are suspended pending final disposition of the civil action.

Within twenty days after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for appropriate

¹ If a copy of the pleadings in the civil action was not filed with the motion to suspend, Opposer is allowed until twenty days from the date of this order in which to file a copy of the pleadings.

² In view of the suspension for civil action, Applicant's motion to suspend is moot. Nonetheless, the Board notes that Applicant's motion is unsupported and does not show good cause to suspend. The inability of Applicant to collaterally attack Opposer's pending applications is not relevant to this proceeding or prejudicial to Applicant.

action.³ Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

During the suspension period, the parties must notify the Board of any address or email address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period. Upon resumption, if appropriate, the Board may consolidate related Board cases.⁴

³ A proceeding is considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed, or all appeals filed have been decided and the time for any further review has expired. *See* TBMP § 510.02(b).

⁴ Applicant's July 2, 2019 change of correspondence address is noted. The Board's proceeding file has been updated accordingly.

EXHIBIT 6

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA962392**

Filing date: **03/25/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Irene A Meagher		
Entity	Individual	Citizenship	UNITED STATES
Address	2101 Legacy Court Keller, TX 76248 UNITED STATES		

Attorney information	Wendy Peterson Not Just Patents LLC PO Box 18716 Minneapolis, MN 55418 UNITED STATES wsp@NJPLS.com, wspnjpls@gmail.com 6515007590
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Registration Subject to Cancellation

Registration No.	3319834	Registration date	10/23/2007
Registrant	H-E-B, LP 646 SOUTH FLORES SAN ANTONIO, TX 78204 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 2006/09/00 First Use In Commerce: 2006/09/00
All goods and services in the class are subject to cancellation, namely: Retail grocery store services

Grounds for Cancellation

The mark is or has become generic	Trademark Act Section 14(3), or Section 23 if on Supplemental Register
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)

Attachments	Petition to Cancel Mi Tienda RN 3319834.pdf(1929279 bytes)
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Signature	/Wendy Peterson/
Name	Wendy Peterson

Date	03/25/2019
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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Cancellation Proceeding _____

In the matter of trademark registration No 3319834

For the mark MI TIENDA

Registered on Oct. 23, 2007

Irene Alexis Meagher vs. HEB, LP

PETITION TO CANCEL

Irene Alexis Meagher, a Texas individual, of 2101 Legacy Court, Keller TX 76248, believes that she will continue to be damaged by the continued registration of the mark shown in the above-identified caption, and hereby petitions to cancel the registration of the same.

Based upon information and belief:

1. This petition is timely, a petition to cancel a mark registered on the Principal Register based on genericness may be filed at any time pursuant to § 24 of the Act. 1. Section 14(3) of the Trademark Act provides for cancellation, at any time after five years from the date of registration of a mark, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered. See *Finanz St. Honore, B.V. v. Johnson & Johnson*, 85 USPQ2d 1478 (TTAB 2007).
2. The registered services for RN 3319834 in IC 35 are: Retail grocery store services. The application was made on March 22, 2005 as an intent-to-use application under Section 1(b).
3. Respondent advertises their two Mi Tienda retail grocery stores at the internet site mitiendatx.com.

STANDING

4. Petitioner is the owner of the (now abandoned) trademark application for mitiendra SN 87609013 for Internet-based social networking services.

5. Petitioner has been an owner in internet-based businesses since as early as January 2005 before Respondent's application for Mi Tienda.
6. Petitioner has a personal stake in the generic word STORE and has a personal stake in any foreign translation of the word STORE remaining in the public domain.
7. Standing to assert that a term is generic may be shown where a plaintiff has a real interest in the proceeding because it is one who has a present or prospective right to use the term descriptively or generically in its business. *Nobell.com LLC v. Qwest Communications International, Inc.*, 66 USPQ2d 1300, 1304 (TTAB 2003).

GROUND: GENERICNESS

8. One year after application was filed, Respondent amended the subject application to include the statement the "English translation of the words "MI TIENDA" in the mark is "MY STORE"" in a Response to Office Action on March 14, 2006 (application date March 22, 2005).
9. A disclaimer of "TIENDA" was also provided by Respondent in the same Response to Office Action on March 14, 2006.
10. Respondent's MI TIENDA stores are aimed at the Mexican American Hispanic community.
11. Respondent's two Mi Tienda stores are located in Texas neighborhoods where Hispanics/Latinos make up the primary population.
12. Mi Tienda is intended to serve the broader Houston area as what HEB calls a Latino 'format store'.
13. Respondent's stores are designed primarily to recall a generic Mexican village store.
14. Gwen Newland, HEB director of design, has been quoted to say that the target growing Latino segment is more deeply rooted in traditions, culture, and buying habits than any other customer group.
15. HEB is targeting Latino consumers with the Spanish word for STORE and by providing stores that cater to the culture, tradition and buying habits of those who would shop at a generic Mexican village Tienda (store).

16. HEB has admitted in its application that STORE is generic and the term is disclaimed.
17. Mi Tienda is merely the possessive form of Tienda and merely reinforces that these two stores define a category of Hispanic/Latino format store.
18. Respondent's use of the Spanish pronoun MI is akin to use of an apostrophe "S," which indicates possession and does change the generic meaning of the mark. *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009) ("The absence of the possessive form in applicant's mark BINION has little, if any, significance for consumers in distinguishing it from the cited mark.").
19. The umbra cast by HEB's specially designed, traditional-looking generic TIENDA is enough to encompass the addition of the non-distinguishing possessive MI.
20. Generic terms are terms that the relevant purchasing public understands primarily as the common or class name for the goods or services.
21. Just as a plural form does not make a term less generic, neither would a possessive form of the word make it less generic. *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985) ("We see no significance in the fact that the term 'COMPUTED' is used instead of 'COMPUTER' or 'COMPUTERIZED.'")
22. Tienda or the possessive for Mi Tienda is understood by the relevant purchasing public as a traditional Mexican village store. The Mi Tienda stores are designed for this effect.
23. Respondent's website recognizes that Mi Tienda is a Spanish store at a nearby location. The red pin on their website allows a consumer to pick which My Store is their store when viewing circulars.

24.



25. The same page on Respondent's website emphasizes the use of the possessive and non-distinctive element MI that is used over and over and over again.

The screenshot displays the MI TIENDA website interface. At the top, the logo "MI TIENDA" is prominently featured, followed by navigation links for "Carnicería", "Panadería", "Tortillería", and "Abarrotes". Below this, a horizontal menu lists "Departamentos", "Productos Auténticos", "Ofertas", "Eventos", and "Quiénes Somos". A "Weekly Ad" section indicates the validity from March 20 to March 26, 2020, and includes a "Grid View" toggle. The main content area is divided into several vertical sections: "MI CARNICERÍA" (meat products), "MIS MARISCOS" (seafood), "MI COCINA" (cooking ingredients), "MI CREMERÍA" (dairy products), "MIS FRUTAS Y VERDURAS" (fruits and vegetables), "MI PANADERÍA" (bakery items), and "¡BARATÍSIMO TODOS LOS DÍAS!" (daily low prices). Each section contains numerous product images with their respective prices and promotional tags. The website footer includes "Page 1 of 2" and a "Powered by Flipp" notice.

26. Under the doctrine of foreign equivalents, a word commonly used in another language as the generic name of a [service] cannot be imported into the United States and be transformed into a valid trademark. § 12:41. Doctrine of foreign equivalents, 2 McCarthy on Trademarks and

Unfair Competition § 12:41 (5th ed.)(“FRUTTA FRESCA was denied placement on the Supplemental Register because it would be recognized as a generic name for fresh fruit in the United States.)

27. Mi Tienda is a common name in Mexico for a generic village retail store. HEB uses HEB as the store name at their stores in Mexico to distinguish themselves.
28. Mi Tienda is also a common name in the United States for retail stores across the country (not just in Texas).
29. Allowing continued registration by HEB of the possessive Spanish word for STORE violates the premises of trademark law. *Holland v. C. & A. Import Corporation*, 8 F. Supp. 259, 261, 22 U.S.P.Q. 249 (S.D. N.Y. 1934) (“[A] word commonly used in other countries to identify a kind of product and there in the public domain as a descriptive or generic name may not be appropriated here as a trademark on that product even though the person claiming the word was the one who introduced the product here and the word then had no significance to our people generally. The rule is a just one If others who may bring the same product here later cannot sell it under its real name, fair competition would be greatly impeded.”)
30. Competitors should be able to describe their Hispanic/ Latino format retail stores as a TIENDA or its possessive form MI TIENDA.
31. MI TIENDA meets both steps in determining whether a mark is generic: (1) What is the genus of goods or services at issue? and (2) Is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services? See *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). The foreign equivalent of a generic English word is no more registrable than the English language term. See *In re Oriental Daily News, Inc.*, 230 USPQ 637 (TTAB 1986). When a registered term is generic for one or more of the goods identified in a registration, that registration may be cancelled in its entirety. See *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988).

32. TMEP 1209.01(c)(i) Test: The genus of the goods and/or services may be defined by an applicant's identification of goods and/or services. See *In re Cordua Rests., Inc.*, 823 F.3d 594, 602, 118 USPQ2d 1632, 1636 (Fed. Cir. 2016) (characterizing as the "correct approach" the Board's conclusion that the genus of the services at issue was adequately defined by the wording "restaurant services" in applicant's identification of services). The relevant public for a genericness determination refers to the purchasing or consuming public for the identified goods and/or services. *Sheetz of Del., Inc. v. Doctor's Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013) (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 641, 19 USPQ2d 1551, 1553 Fed. Cir. 1991)).
33. The relevant Spanish speaking public identifies TIENDA as a retail grocery store for Spanish speaking people.
34. To the extent that the Spanish term MI TIENDA is indistinguishable from the generic TIENDA for grocery store services, it violates Sections 1, 2, 3, and 45 of the Lanham Act, 15 U.S.C. §§ 1051, 1052, 1053, and 1127, and therefore should be cancelled.

GENERIC (continued) and FRAUD ON THE USPTO-Section 8 filing

35. Registrant traveled through Mexico, Texas and Arizona to come up with the new format store MI TIENDA. The intent to use a generic term began before the first store ever opened.
36. There are dozens of active Mi Tienda design marks registered in Mexico but no word marks.
37. In Mexico, HEB would have seen the presence of the SISTEMA INTEGRAL DE ABASTO



RURAL, S.A.P.I. DE C.V. 1998 registration of

for

almost everything under the sun (translates to SEEKING TO PROTECT ALL KINDS OF

TRANSPORTATION, PACKAGING, SAVING, COLLECTING, RESERVE, DEPOSIT AND STORAGE SERVICES OF ALL TYPES OF MATERIALS, GOODS, PRODUCTS AND NATURAL, PERISHABLE AND PROCESSED FOODS AS BOTH COMMERCIAL AND POPULAR CONSUMPTION) before they created their new format store line.

38. The only reasonable explanation for HEB Mi Tienda being able to register in Mexico in the face of the preexisting registrations in Mexico would be that the phrase MI TIENDA as a whole is generic and only the design part of the marks distinguishes between the different sources.
39. The HEB Mi Tienda stores themselves are also intentionally a generic imitation of a Mexican village store.
40. The target Latino segment of Mexican immigrants would know that MI TIENDA is a generic term for a retail grocery store.
41. Even though HEB's services are defined broadly as retail grocery stores, if a term is generic for any subset of that description such as Hispanic grocery store, it is still generic.
42. Just as a plural form does not make a term less generic, neither would a possessive form of the word make it less generic. *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985) ("We see no significance in the fact that the term 'COMPUTED' is used instead of 'COMPUTER' or 'COMPUTERIZED.'")
43. HEB did not disclose that TIENDA or the possessive form MI TIENDA was generic when filing their Section 8 filings on Oct. 23, 2012 or Sep. 01, 2017 even though the stores had become just what they were intended to become a generic Mexican village-like store, literally Spanish 'store'.
44. Bringing the term MI TIENDA to the U.S. from Mexico, intended for consumers making the trip themselves, does not make the term any less generic.
45. HEB efforts to register this generic claim include false statements in their Section 8 filings, intended to deceive, in order to maintain their registrations. *Bart Schwartz Intern. Textiles, Ltd. v. F.T.C.*, 48 C.C.P.A. 933, 289 F.2d 665, 669, 129 U.S.P.Q. 258 (1961) (Fraud was found.

Evidence proved that when registrant applied “for registration of ‘Fiocco’ as [registrant's] trademark [it] knew that others had the right to use this word in ‘commerce’ for textile fabrics.”).

46. It is clear that if fraud is found in a Section 8 affidavit or declaration to keep a registration alive or to obtain a renewal, that is a ground for cancellation of the registration. § 31:80. Fraud in post-registration declarations—Cancellation for fraud in Section 8 and Renewal Declarations, 6 McCarthy on Trademarks and Unfair Competition § 31:80 (5th ed.)

47. Maintenance of a generic term is fraudulent registration.

Petitioner asks that the Board cancel the subject registration.

Submitted By: /Wendy Peterson /

Date: March 25, 2019
Wendy Peterson, Attorney for Petitioner, Irene Alexis Meagher
Not Just Patents LLC
PO Box 18716
Minneapolis, MN 55418
wsp@NJPLS.com, wspnjpls@gmail.com

EXHIBIT 7

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

SKS/lw

June 6, 2019

Cancellation No. 92070913

Irene Alexis Meagher

v.

H-E-B, LP

Shanna Sanders, Interlocutory Attorney:

On May 8, 2019, Respondent filed a motion for summary judgment and alternative motion to dismiss. The motion is timely pursuant to Trademark Rule 2.127(e)(1).

I. Proceedings are Suspended

When a party timely files a potentially dispositive motion, the proceeding is suspended with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. *See* Trademark Rule 2.127(d). Accordingly, as of the filing date of the motion for summary judgment, proceedings are suspended pending disposition of the motion. Any paper filed during the pendency of this motion which is not germane thereto will be given no consideration. *See* Trademark Rule 2.127(d).

In addition to tolling the time to respond to outstanding discovery requests, suspension of proceedings tolls the time for parties to make required disclosures. *See* TBMP § 528.03.

II. Civil Action

Respondent's motion refers to a pending civil action between the parties in the U.S. District Court for the Southern District of Texas in which Petitioner (defendant in the civil action) has counterclaimed for cancellation. *See HEB Grocery Company, LP v. Todd Meagher, et. al*, Civil Action No. 4:17-cv-02810 (S.D. Tex.) ("Civil Action"). 8 TTABVUE 2. So that the Board may consider whether it is appropriate to suspend this proceeding pending disposition of the Civil Action, Respondent is ordered within **thirty days** from the date of this order to file copies of the operative pleadings in the Civil Action and a statement regarding the status of the case. *See* Trademark Rule 2.117(a); TBMP § 510.